

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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| In Re: | : | BANKRUPTCY NO. 20-10334 TPA |
| | : | |
| JOSEPH MARTIN THOMAS, | : | JUDGE THOMAS P. AGRETI |
| Debtor. | : | |
| | : | CHAPTER 11 |
| JOSEPH MARTIN THOMAS, | : | |
| Movant, | : | RELATED TO DOCUMENT NO. 206 |
| | : | |
| v. | : | |
| | : | |
| TOWNSHIP OF GREENE, TAX | : | |
| COLLECTOR; GREENE TOWNSHIP | : | |
| SEWER AUTHORITY; CHARLES R. | : | |
| BURGER and MARGARET J. BURGER, | : | |
| their heirs, successors, and assigns; PNC | : | |
| BANK, NATIONAL ASSOCIATION; | : | |
| WELLS FARGO BANK, NATIONAL | : | |
| ASSOCIATION; UNITED STATES OF | : | |
| AMERICA, INTERNAL REVENUE | : | |
| SERVICE; COMMONWEALTH OF | : | |
| PENNSYLVANIA, DEPT. OF REVENUE; | : | |
| and RICHARD A. MLAKAR and | : | |
| CYNTHIA A. MLAKAR; | : | |
| Respondents. | : | |

ORDER CONFIRMING SALE OF PROPERTY
FREE AND DIVESTED OF LIENS

AND NOW, this ____ day of _____, 2020, on consideration of the Debtor's *Motion for Private Sale of Real Property Free and Divested of Liens*, Joseph Martin Thomas, to Richard A. Mlakar and Cynthia A. Mlakar for \$299,900.00, after hearing held in: the Bankruptcy Courtroom, U.S. Courthouse, 17 South Park Row, Erie, Pennsylvania 16501, this date, the Court finds:

- 1) That service of the *Notice of Hearing and Order* setting hearing on said *Motion for Private Sale of Real Property Free and Divested of Liens* of the above-named Respondents, was effected on the following secured creditors whose liens are received in said *Motion/Complaint* for private sale, viz:

| <u>DATE OF SERVICE</u> | <u>NAME OF LIENOR AND SECURITY</u> |
|------------------------|--|
| October 22, 2020 | Office of the United States Trustee Liberty Center 1001 Liberty Avenue, Suite 970 Pittsburgh, PA 15222 |
| October 22, 2020 | Tax Collector Township of Greene 8628 Wattsburg Road Erie, PA 16509 |
| October 22, 2020 | Greene Township Sewer Authority 9333 Tate Road Erie, PA 16509 |
| October 22, 2020 | Natalie Ruschell, Esquire Ruschell & Associates 9333 Tate Road Suite 115 Erie, PA 16509 |
| October 22, 2020 | Natalie Ruschell, Esquire 308 Eaton Avenue P.O. Box 577 Midway, PA 15060 |
| October 22, 2020 | Charles R. Burger Margaret J. Burger Their heirs, successors, and assigns 9890 Wattsburg Road Erie, PA 16509 |
| October 22, 2020 | Jean Mitchell Kasinec 5412 Pinehurst Drive Erie, PA 16509 |
| October 22, 2020 | Chris Burger 9890 Wattsburg Road Erie, PA 16509 |
| October 22, 2020 | PNC Bank, National Association 2730 Liberty Avenue Pittsburgh, PA 15222 |

| <u>DATE OF SERVICE</u> | <u>NAME OF LIENOR AND SECURITY</u> |
|------------------------|--|
| October 22, 2020 | Brian Nicholas, Esquire KML Law Group, P.C. 701 Market Street Suite 5000 Philadelphia, PA 19106 (VIA CM/ECF) |
| October 22, 2020 | PNC Bank, N.A. P.O. Box 94982 Cleveland, OH 44101 |
| October 22, 2020 | Wells Fargo Bank, National Association 4101 Wiseman Blvd. Building 307 San Antonio, TX 78251 |
| October 22, 2020 | Wells Fargo Bank, N.A. c/of Steven Treadway 1620 E. Roseville Parkway, 1 st Floor, Suite 100 MAC A1792-018 Roseville, CA 95661 |
| October 22, 2020 | Salene Mazure Kraemer, Esquire Bernstein-Burkley PC 707 Grant Street, Suite 2200 Gulf Tower Pittsburgh, PA 15219 (VIA CM/ECF) |
| October 22, 2020 | Attorney General of the United States U.S. Dept. of Justice 950 Pennsylvania Avenue, NW Washington, D.C. 20530 |
| October 22, 2020 | United States Attorney's Office Western District of Pennsylvania ATTENTION: Civil Process Clerk Joseph F. Weis, Jr. U.S. Courthouse 700 Grant Street Suite 4000 Pittsburgh, PA 15219 |

| <u>DATE OF SERVICE</u> | <u>NAME OF LIENOR AND SECURITY</u> |
|------------------------|--|
| October 22, 2020 | United States Attorney's Office Western District of Pennsylvania ATTENTION: Civil Process Clerk 17 South Park Road, Suite A330 Erie, PA 16501 |
| October 22, 2020 | Scott W. Brady, Esquire U.S. Attorney for the Western District of PA Joseph F. Weis, Jr. U.S. Courthouse 700 Grant Street, Suite 4000 Pittsburgh, PA 15219 |
| October 22, 2020 | Internal Revenue Service ATTENTION: Centralized Insolvency Operations P.O. Box 7346 Philadelphia, PA 19101-7346 |
| October 22, 2020 | Internal Revenue Service 1000 Liberty Avenue Stop 711B Pittsburgh, PA 15222-3714 |
| October 22, 2020 | Internal Revenue Service P.O. Box 7317 Philadelphia, PA 19101-7317 |
| October 22, 2020 | Pa. Dept. of Revenue Bankruptcy Division P.O. Box 280946 Harrisburg, PA 17128-0946 |
| October 22, 2020 | Pa. Dept. of Revenue 4 th & Walnut Street Harrisburg, PA 17128 |
| October 22, 2020 | Attorney General of Pennsylvania Western Regional Office 1251 Waterfront Place Mezzanine Level Pittsburgh, PA 15222 |

DATE OF SERVICE

NAME OF LIENOR AND SECURITY

| | |
|------------------|--|
| October 22, 2020 | Lauren Michaels, Esquire Office of the Attorney General, Dept. of Revenue 1251 Waterfront Place Mezzanine Level Pittsburgh, PA 15222 (VIA CM/ECF) |
| October 22, 2020 | Richard A. Mlakar Cynthia A. Mlakar 7710 N. Soledad Ave. Tucson, AZ 85741 |
| October 22, 2020 | Coldwell Banker Select, Realtors ATTENTION: Lori Hess - Tom Jones Group 4664 W. 12 th St. Erie, PA 16505 |
| October 22, 2020 | Coldwell Banker Select, Realtors ATTENTION: Mark Hutchison 413 W. Plum, Suite A Edinboro, PA 16412 |

That sufficient general notice of said hearing and sale, together with the confirmation hearing thereon, was given to the creditors and parties in interest by the moving party as shown by the certificate of service filed and that the named parties were served with the *Motion/Complaint*.

2) That said sale hearing was duly advertised on the Court's website pursuant to *W.P.A LBR 6004-1(c)(2)* on October 22, 2020, in the *Erie Times News* on October 30, 2020 and in the *Erie County Legal Journal* on October 30, 2020, as shown by the Proof of Publications duly filed.

3) That at the sale hearing the highest/best offer received was that of the above Purchasers and no objections to the sale were made which would result in cancellation of said sale.

4) That the price of \$299,900.00 offered by Richard A. Mlakar and Cynthia A. Mlakar was a full and fair price for the property in question.

5) That the Purchaser has acted in good faith with respect to the within sale in accordance with *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F2d. 143 (3d Cir. 1986).

NOW THEREFORE, it is hereby **ORDERED, ADJUDGED AND DECREED** that the sale by Special Warranty Deed of the real property described as 9830 Wattsburg Road, Erie, Pennsylvania 16509 is hereby CONFIRMED to Richard A. Mlakar and Cynthia A. Mlakar for \$ 299,900.00, free and divested of the above recited liens and claims, and, that the Movant is authorized to make, execute and deliver to the Purchasers above named the necessary deed and/or other documents required to transfer title to the property purchased upon compliance with the terms of sale;

It is **FURTHER ORDERED**, that the above recited liens and claims, be, and they hereby are, transferred to the proceeds of sale, if and to the extent they may be determined to be valid liens against the sold property, that the within decreed sale shall be free, clear and divested of said liens and claims;

It is **FURTHER ORDERED**, that the following expenses/costs shall immediately be paid at the time of closing. *Failure of the Closing Agent to timely make and forward the disbursements required by this Order will subject the closing agent to monetary sanctions, including among other things, a fine or the imposition of damages, after notice and hearing, for failure to comply with the above terms of this Order.* Except as to the distribution specifically authorized herein, all remaining funds shall be held by Counsel for Movant pending further Order of this Court after notice and hearing.

- 1) The following liens/claims and amounts: (a) Payment in full of the first mortgage lien in favor of PNC Bank, National Association, in the approximate principal amount of \$66,046.48, plus interest and satisfaction costs.
- 2) Delinquent real estate taxes, if any;
- 3) Current real estate taxes, pro-rated to the date of closing;
- 4) The costs of local newspaper advertising in the amount of \$376.00, to be reimbursed to The Quinn Law Firm;
- 5) The costs of legal journal advertising in the amount of \$236.25, to be reimbursed to The Quinn Law Firm;
- 6) Reimbursement to The Quinn Law Firm of the filing fee for the Motion to Sell Property of the Estate Free and Clear of Liens in the amount of \$181.00;
- 7) The sum of \$29,990.00 (10% of the sale price) from the net proceeds shall be placed in escrow by Debtor's counsel, Michael P. Kruszewski, Esquire and the Quinn Law Firm on account of approved and anticipated, necessary costs and expenses of the administration of the Bankruptcy Estate. Said funds shall remain in escrow until an agreement is reached by relevant parties regarding the distribution of these funds or until further Order of Court.

- 8) The Court approved realtor commission in the amount of \$17,220.00;
- 9) Other: The sum of no more than \$1,500.00 shall be paid to the closing agent who represents the Debtor at the time of the real estate closing.
- 10) Other: The sum of \$9,884.00 shall be paid to the Greene Township Sewer Authority, which represents the fees due and owing for tapping into public sewer services.
- 11) Other: Any and all due and owing municipal fees, as well as any and all water and sewer charges, if applicable, shall be paid at the time of the closing.
- 12) Other: Transfer Taxes shall be paid in accordance with the terms of the Agreement for Sale attached to the Motion for Private Sale of Real Property Free and Divested of Liens. Debtor is to pay one-half (½) of the transfer taxes due and owing, which equals 1% of the purchase price or \$2,999.00.
- 13) Other: The sum of \$1,950.00 shall be paid to the Office of the U.S. Trustee on account of quarterly U.S. Trustee's fees due in regard to the disbursements made at the time of the real estate closing.
- 14) Other: The remaining net proceeds shall be sent to Salene Mazur Kraemer, Esquire of Bernstein Burkley, 707 Grant Street, Suite 2200, Pittsburgh, Pennsylvania 15219 as counsel to Wells Fargo Bank, National Association, representing a partial payment on the second mortgage lien in favor of Wells Fargo Bank, National Association, with an approximate principal balance due of \$569,603.42, plus interest and satisfaction costs if applicable.

It is **FURTHER ORDERED** that:

- 1) Within seven (7) days of the date of this Order, the Movant/Plaintiff shall serve a copy of the within Order on each Respondent/Defendant (i.e., each party against whom relief is sought) and its attorney of record, if any, upon any attorney or party who answered the motion or appeared at the hearing, the attorney for the debtor, the Closing Agent, the Purchaser, and the attorney for the Purchaser, if any, and file a Certificate of Service.
- 2) *Closing shall occur within thirty (30) days of this Order.*
- 3) *Within seven (7) days following closing, the Movant/Plaintiff shall file a Report of Sale which shall include a copy of the HUD-1 or other Settlement Statement; and,*
- 4) This *Sale Confirmation Order* survives any dismissal or conversion of the within case.

Thomas P. Agresti, Judge
United States Bankruptcy Court